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SEC

SERVICE DATE – OCTOBER 31, 2005

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. 42094

PCI TRANSPORTATION, INC.

v.

FORT WORTH & WESTERN RAILROAD COMPANY

Decided: October 28, 2005

PCI Transportation, Inc. (PCI), filed a complaint and request for injunctive relief against Fort Worth & Western Railroad Company (FWWR) on August 8, 2005. PCI alleges unreasonable demurrage practices. PCI filed the complaint pursuant to a decision by the U.S. Court of Appeals for the Fifth Circuit in PCI Transportation, Inc. v. Fort Worth & Western Railroad Company, 418 F.3d 535 (5th Cir. 2005). In that decision, the Fifth Circuit affirmed a decision by the U.S. District Court for the Northern District of Texas that granted a request by FWWR to remove a complaint filed by PCI in a Texas state court to the U.S. District Court. That complaint remains pending before the District Court.

FWWR has moved to dismiss the complaint that PCI filed here. FWWR contends that this complaint states a cause of action for breach of contract and for other relief under Texas state law. FWWR argues that, under 49 U.S.C. 10709, the Board lacks subject matter jurisdiction to hear the complaint. Alternatively, FWWR asks the Board to hold this proceeding in abeyance pending action by the District Court.

PCI has replied to the motion. PCI argues that, in affirming the removal of its complaint from state court to federal court, the Fifth Circuit held that the Board has exclusive jurisdiction over all of PCI's claims, including those for injunctive relief. PCI requests that the Board hold an emergency oral hearing to consider PCI's request for temporary and permanent injunctions, permit it to begin discovery, and otherwise grant the relief requested in the complaint it filed here.

The proceeding will be dismissed. There is no basis for the Board to hold the hearing, or otherwise to entertain the relief requested by PCI, given that a complaint and related matters are now pending before the District Court. If any action of the District Court necessitates or otherwise justifies the filing of a request for relief here by PCI, it may do so at that time.

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. PCI's complaint is dismissed without prejudice.
2. This decision will be effective on the date of service.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams

Secretary